



CV 06-603 m

## HAWAII DISABILITY RIGHTS CENTER

900 Fort Street Mall, Suite 1040, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

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### Via Certified Mail, Return Receipt

September 13, 2006

Susanna F. Cheung, President and CEO  
Opportunities for the Retarded, Inc.  
64-1510 Kamehameha Highway  
Wahiawa, Hawai'i 96786

Dear Ms. Cheung:

### Request for Guardian Contact Information (Abuse & Neglect Investigation)

I am in receipt of your September 8, 2006 letter denying HDRC's request for name and contact information for the legal guardians of persons currently residing or provided day program services by ORI.

I note that your denial does not address HDRC's federal authority to obtain guardian information within the context of an investigation of suspected abuse and neglect, which has led you to misapply federal law and the Access Protocol between ORI and HDRC.

Regardless, DD Act regulations require the disclosure of guardian information upon any denial of access (in this instance, to records):

If a [P&A] system is denied access to ... records covered by the [DD Act] it shall be provided promptly with a written statement of reasons, including, in the case of a denial for alleged lack of authorization, **the name and address of the legal guardian, conservator, or other legal representative of an individual with developmental disabilities.**

45 C.F.R. § 1386.22(i) (boldface emphasis added). See also Pennsylvania Protection and Advocacy, Inc. v. Royer-Greaves School for the Blind, 1999 WL 179797, \*11 (E.D. Pa) (Limiting P&A services only to persons able to consent to access their records is contrary to the purposes of the DD Act, therefore "all a P&A need to do ... to receive a list of guardians is to ask for it"); Robbins v. Budke, 739 F. Supp. 1479 (D.N.M. 1990).

We ask that the guardian contact information be provided to HDRC by next **Thursday, September 20, 2006**, which allows ORI ample time to gather the contact information.

**Exhibit "E"**



HAWAII'S PROTECTION AND ADVOCACY SYSTEM FOR PEOPLE WITH DISABILITIES  
HAWAII'S CLIENT ASSISTANCE PROGRAM



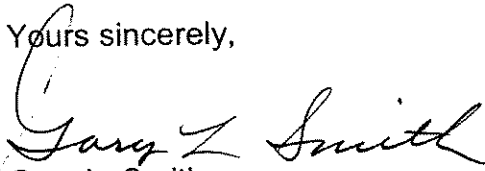
**Intimidation and/or Misinformation of Guardians**

We have been informed that ORI mailed consent to disclose letters to legal guardians. (We assert once more that disclosure of guardian contact information is mandatory under law, and that guardian consent is not required to disclose contact information.) I understand that in one situation, the legal guardian of one of your ORI residents received a copy of your "consent to disclose letter" and replied that she would permit HDRC to review the resident's files. An ORI staff member subsequently telephoned the guardian and persuaded her to change her initial position and revoke her initial consent based on the staff member's representation that a review would lead to the loss of the resident's public benefits. The guardian revoked her consent upon being threatened with these intimidating and misleading consequences. We view these efforts to impede our P&A access authority quite seriously, and will vigorously defend our authority. These efforts to hinder our lawful investigation must cease and desist.

**Abuse and Neglect Allegations**

You requested further information about the individuals and/or nature of the abuse and neglect allegations. I am unable to furnish any further information at this time.

Yours sincerely,

  
Gary L. Smith  
President

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

Article Sent To:

Susanna F. Cheung, ORI

Postage

\$

.39

Certified Fee

2.40

Return Receipt Fee  
(Endorsement Required)

1.05

Restricted Delivery Fee  
(Endorsement Required)

Total Postage & Fees

\$ 4.64

Postmark  
Here

Name (Please Print Clearly) (To be completed by mailer)

Susanna F. Cheung, ORI

Street, Apt. No., or PO Box No.

64-1510 Kamehameha Highway

City, State, ZIP+4

Wahiawa, HI 96786

PS Form 3800, July 1999

See Reverse for Instructions

7099 3220 0010 2725 9088

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Susanna F. Cheung, P & CEO  
 Opportunities for the Retarded,  
 64-1510 Kamehameha Highway  
 Wahiawa, HI 96786

2. Article Number

(Transfer from service label)

7099-3220-0010-2725-9088

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X 

☒ Agent

☐ Addressee

B. Received by (Printed Name)

Mary Isneec

C. Date of Delivery

9/14/06

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

Inc.

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes